

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1217-AIR-E TCEQ ID: RN102541794 CASE NO.: 34325**  
**RESPONDENT NAME: Bruce's, Inc.**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Bruces, 345 County Road 792, Evadale, Jasper County</p> <p><b>TYPE OF OPERATION:</b> Compost operation</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on July 7, 2007, stating that dust from Bruce's, Inc. was causing eye irritation at a nearby residence. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda..</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 29, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>     <b>TCEQ Attorney/SEP Coordinator:</b> None     <b>TCEQ Enforcement Coordinator:</b> Mr. Daniel Siringi, Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8799;     Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171     <b>Respondent:</b> Mr. Ben Bruce, Vice President, Bruce's, Inc., P.O. Box 148, Evadale, Texas 77615     <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> June 7, 2007</p> <p><b>Date of Investigation Relating to this Case:</b> June 7, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 20, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation. One violation was documented.</p> <p><b>AIR</b></p> <p>Failed to prevent the occurrence of a nuisance condition at nearby residences. Specifically, on June 7, 2007, black boiler ash emissions that emanated from the Respondent compost operations were documented on nearby private property sufficient to cause eye irritation, thus interfering with the normal usage and enjoyment of the property [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$2,425</p> <p><b>Total Deferred:</b> \$485  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,940</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on July 26, 2007, the Respondent provided documentation that all the existing ash at the Plant has been covered with decomposed pine bark which does not produce any dust.</p>

Additional ID No(s): JC0022G



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

<b>DATES</b>	<b>Assigned</b>	23-Jul-2007	<b>Screening</b>	26-Jul-2007	<b>EPA Due</b>	
	<b>PCW</b>	31-Jul-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Bruce's, Inc.		
<b>Reg. Ent. Ref. No.</b>	RN102541794		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	34325	<b>No. of Violations</b>	1
<b>Docket No.</b>	2007-1217-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Enf. Coordinator</b>	Daniel Siringi
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 3
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>
			\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$2,500**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **7% Enhancement** **Subtotals 2, 3, & 7** **\$175**

**Notes** The Respondent has one (1) NOV with the same or similar violation and one (1) NOV without the same or similar violation within the past five (5) years.

**Culpability** **No** **0% Enhancement** **Subtotal 4** **\$0**

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** **10% Reduction** **Subtotal 5** **\$250**

Before NOV NOV to EDP RP/Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with x)

**Notes** The Respondent documented completion of corrective actions on July 26, 2007.

**Total EB Amounts** **\$7** **0% Enhancement\*** **Subtotal 6** **\$0**  
**Approx. Cost of Compliance** **\$1,000** **\*Capped at the Total EB \$ Amount**

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$2,425**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

**Notes**

**Final Penalty Amount** **\$2,425**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$2,425**

**DEFERRAL** **20% Reduction** **Adjustment** **-\$485**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$1,940**

Screening Date 26-Jul-2007

Docket No. 2007-1217-AIR-E

PCW

Respondent Bruce's, Inc.

Policy Revision 2 (September 2002)

Case ID No. 34325

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102541794

Media [Statute] Air

Enf. Coordinator Daniel Siringi

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

The Respondent has one (1) NOV with the same or similar violation and one (1) NOV without the same or similar violation within the past five (5) years.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 7%

<b>Screening Date</b> 26-Jul-2007		<b>Docket No.</b> 2007-1217-AIR-E		<b>PCW</b>
<b>Respondent</b> Bruce's, Inc.		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 34325		<i>PCW Revision June 26, 2007</i>		
<b>Reg. Ent. Reference No.</b> RN102541794				
<b>Media [Statute]</b> Air				
<b>Enf. Coordinator</b> Daniel Siringi				
<b>Violation Number</b>		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>		
<b>Rule Cite(s)</b>		<div style="border: 1px solid black; padding: 5px;">30 Tex. Admin. Code § 101.4 and Texas Health &amp; Safety Code § 382.085(b)</div>		
<b>Violation Description</b>		<div style="border: 1px solid black; padding: 5px;">Failed to prevent the occurrence of a nuisance condition at nearby residences. Specifically, on June 7, 2007, black boiler ash emissions that emanated from the Respondent compost operations were documented on nearby private property sufficient to cause eye irritation, thus interfering with the normal usage and enjoyment of the property.</div>		
<b>Base Penalty</b>				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$10,000</div>

**>> Environmental, Property and Human Health Matrix**

OR		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<div style="border: 1px solid black; padding: 2px; text-align: center;"> </div>	x	<div style="border: 1px solid black; padding: 2px; text-align: center;"> </div>	
	Potential	<div style="border: 1px solid black; padding: 2px; text-align: center;"> </div>	<div style="border: 1px solid black; padding: 2px; text-align: center;"> </div>	<div style="border: 1px solid black; padding: 2px; text-align: center;"> </div>	<b>Percent</b> <div style="border: 1px solid black; padding: 2px; text-align: center;">25%</div>

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	
<div style="border: 1px solid black; padding: 2px; text-align: center;"> </div>	<div style="border: 1px solid black; padding: 2px; text-align: center;"> </div>	<div style="border: 1px solid black; padding: 2px; text-align: center;"> </div>	<div style="border: 1px solid black; padding: 2px; text-align: center;"> </div>	<div style="border: 1px solid black; padding: 2px; text-align: center;"> </div>	
					<b>Percent</b> <div style="border: 1px solid black; padding: 2px; text-align: center;">0%</div>

<b>Matrix Notes</b>	<div style="border: 1px solid black; padding: 5px;">Human health or the environment has been exposed to significant amounts of pollutants as a result of this violation.</div>
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<b>Adjustment</b>	<div style="border: 1px solid black; padding: 2px; text-align: center;">\$7,500</div>
	<div style="border: 1px solid black; padding: 2px; text-align: center;">\$2,500</div>

**Violation Events**

Number of Violation Events	<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>	Number of violation days	<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>
<small>mark only one with an x</small>	<div style="border: 1px solid black; padding: 2px;">daily</div> <div style="border: 1px solid black; padding: 2px;">monthly</div> <div style="border: 1px solid black; padding: 2px;">quarterly</div> <div style="border: 1px solid black; padding: 2px;">semiannual</div> <div style="border: 1px solid black; padding: 2px;">annual</div> <div style="border: 1px solid black; padding: 2px;">single event</div>		
	x		

One single event is recommended.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount	<div style="border: 1px solid black; padding: 2px; text-align: center;">\$7</div>
	<b>Violation Final Penalty Total</b> <div style="border: 1px solid black; padding: 2px; text-align: center;">\$2,425</div>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <div style="border: 1px solid black; padding: 2px; text-align: center;">\$2,425</div>	

## Economic Benefit Worksheet

**Respondent** Bruce's, Inc.  
**Case ID No.** 34325  
**Reg. Ent. Reference No.** RN102541794  
**Media** Air  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,000	6-Jun-2007	26-Jul-2007	0.1	\$7	n/a	\$7

Notes for DELAYED costs

Estimated cost of covering ash piles with pine mulch. Date required is the date of violation and the final date is the date corrective actions were documented.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$7

## Compliance History

Customer/Respondent/Owner-Operator:	CN600893804	Bruce's, Inc.	Classification: AVERAGE	Rating: 2.00																																	
Regulated Entity:	RN102541794	BRUCES	Classification: AVERAGE	Site Rating: 2.00																																	
ID Number(s):	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">PETROLEUM STORAGE TANK</td> <td style="width: 30%;">REGISTRATION</td> <td style="width: 20%;">23990</td> </tr> <tr> <td>REGISTRATION</td> <td></td> <td></td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>11283</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>PERMIT</td> <td>22953</td> </tr> <tr> <td>AIR NEW SOURCE PERMITS</td> <td>ACCOUNT NUMBER</td> <td>JC0022G</td> </tr> <tr> <td>UNDERGROUND STORAGE TANK</td> <td>LICENSE</td> <td>CRP001014</td> </tr> <tr> <td>LICENSING</td> <td></td> <td></td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE</td> <td>EPA ID</td> <td>TXR000062323</td> </tr> <tr> <td>GENERATION</td> <td></td> <td></td> </tr> <tr> <td>INDUSTRIAL AND HAZARDOUS WASTE</td> <td>ID NUMBER</td> <td>F1825</td> </tr> <tr> <td>GENERATION</td> <td></td> <td></td> </tr> </table>				PETROLEUM STORAGE TANK	REGISTRATION	23990	REGISTRATION			AIR NEW SOURCE PERMITS	PERMIT	11283	AIR NEW SOURCE PERMITS	PERMIT	22953	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	JC0022G	UNDERGROUND STORAGE TANK	LICENSE	CRP001014	LICENSING			INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXR000062323	GENERATION			INDUSTRIAL AND HAZARDOUS WASTE	ID NUMBER	F1825	GENERATION		
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INDUSTRIAL AND HAZARDOUS WASTE	ID NUMBER	F1825																																			
GENERATION																																					
Location:	345 COUNTY ROAD 792, EVADALE, TX, 77615		Rating Date: September 01 06 Repeat Violator: NO																																		
TCEQ Region:	REGION 10 - BEAUMONT																																				
Date Compliance History Prepared:	July 25, 2007																																				
Agency Decision Requiring Compliance History:	Enforcement																																				
Compliance Period:	July 25, 2002 to July 25, 2007																																				

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Daniel Siringi Phone: (409) 899-8799

### Site Compliance History Components

- |                                                                                              |            |
|----------------------------------------------------------------------------------------------|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes        |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No         |
| 3. If Yes, who is the current owner?                                                         | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?                                                  | <u>N/A</u> |
| 5. When did the change(s) in ownership occur?                                                | <u>N/A</u> |

### Components (Multimedia) for the Site :

- |              |                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
|--------------|-------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|------------|----------|---|------------|----------|--------------|----|--|-----------------|----------|--|-----------|-------------------------------------------|--|--|--|--|--------------|------------------------------------------------------------------|--|--|--|--|-------|------------|----------|--|--|--|--------------|----|--|-----------------|----------|--|-----------|----------------------------------------|--|--|--|--|--|---------------------------------------------|--|--|--|--|--------------|-----------------------------------------|--|--|--|--|
| A.           | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. | <p>N/A</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| B.           | Any criminal convictions of the state of Texas and the federal government.                                        | <p>N/A</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| C.           | Chronic excessive emissions events.                                                                               | <p>N/A</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| D.           | The approval dates of investigations. (CCEDS Inv. Track. No.)                                                     | <table border="0" style="width: 100%;"> <tr> <td style="width: 5%;">1</td> <td style="width: 20%;">02/22/2005</td> <td style="width: 15%;">(346006)</td> </tr> <tr> <td>2</td> <td>07/26/2006</td> <td>(482771)</td> </tr> </table>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 1               | 02/22/2005 | (346006) | 2 | 07/26/2006 | (482771) |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| 1            | 02/22/2005                                                                                                        | (346006)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| 2            | 07/26/2006                                                                                                        | (482771)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| E.           | Written notices of violations (NOV). (CCEDS Inv. Track. No.)                                                      | <table border="0" style="width: 100%;"> <tr> <td style="width: 10%;">Date:</td> <td style="width: 20%;">08/26/2003</td> <td style="width: 15%;">(145305)</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 35%;"></td> </tr> <tr> <td>Self Report?</td> <td>NO</td> <td></td> <td>Classification:</td> <td>Moderate</td> <td></td> </tr> <tr> <td>Citation:</td> <td colspan="5">30 TAC Chapter 335, SubChapter A 335.2(a)</td> </tr> <tr> <td>Description:</td> <td colspan="5">Failure to obtain authorization to store industrial solid waste.</td> </tr> <tr> <td>Date:</td> <td>05/17/2006</td> <td>(461071)</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Self Report?</td> <td>NO</td> <td></td> <td>Classification:</td> <td>Moderate</td> <td></td> </tr> <tr> <td>Citation:</td> <td colspan="5">30 TAC Chapter 101, SubChapter A 101.4</td> </tr> <tr> <td></td> <td colspan="5">5C THC Chapter 382, SubChapter D 382.085(b)</td> </tr> <tr> <td>Description:</td> <td colspan="5">Failure to prevent nuisance conditions.</td> </tr> </table> | Date:           | 08/26/2003 | (145305) |   |            |          | Self Report? | NO |  | Classification: | Moderate |  | Citation: | 30 TAC Chapter 335, SubChapter A 335.2(a) |  |  |  |  | Description: | Failure to obtain authorization to store industrial solid waste. |  |  |  |  | Date: | 05/17/2006 | (461071) |  |  |  | Self Report? | NO |  | Classification: | Moderate |  | Citation: | 30 TAC Chapter 101, SubChapter A 101.4 |  |  |  |  |  | 5C THC Chapter 382, SubChapter D 382.085(b) |  |  |  |  | Description: | Failure to prevent nuisance conditions. |  |  |  |  |
| Date:        | 08/26/2003                                                                                                        | (145305)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| Self Report? | NO                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Classification: | Moderate   |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| Citation:    | 30 TAC Chapter 335, SubChapter A 335.2(a)                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| Description: | Failure to obtain authorization to store industrial solid waste.                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| Date:        | 05/17/2006                                                                                                        | (461071)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| Self Report? | NO                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Classification: | Moderate   |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| Citation:    | 30 TAC Chapter 101, SubChapter A 101.4                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
|              | 5C THC Chapter 382, SubChapter D 382.085(b)                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| Description: | Failure to prevent nuisance conditions.                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| F.           | Environmental audits.                                                                                             | <p>N/A</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |
| G.           | Type of environmental management systems (EMSs).                                                                  | <p>N/A</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                 |            |          |   |            |          |              |    |  |                 |          |  |           |                                           |  |  |  |  |              |                                                                  |  |  |  |  |       |            |          |  |  |  |              |    |  |                 |          |  |           |                                        |  |  |  |  |  |                                             |  |  |  |  |              |                                         |  |  |  |  |

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BRUCE'S, INC.  
RN102541794**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-1217-AIR-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Bruce's, Inc. ("Bruce's") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Bruce appear before the Commission and together stipulate that:

1. Bruce's owns and operates a compost operation at 345 County Road 792 in Evadale, Jasper County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and Bruce's agree that the Commission has jurisdiction to enter this Agreed Order, and that Bruce's is subject to the Commission's jurisdiction.
4. Bruce's received notice of the violations alleged in Section II ("Allegations") on or about July 25, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Bruce's of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Four Hundred Twenty-Five Dollars (\$2,425) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Bruce's has paid One Thousand Nine Hundred Forty Dollars (\$1,940) of the administrative penalty and Four Hundred Eighty-Five Dollars (\$485) is deferred contingent upon Bruce's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Bruce's fails



to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Bruce's to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Bruce's have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on July 26, 2007, Bruce's provided documentation that all the existing ash at the Plant has been covered with decomposed pine bark which does not produce any dust.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Bruce's has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Plant, Bruce's is alleged to have failed to prevent the occurrence of a nuisance condition at nearby residences. Specifically, on June 7, 2007, black boiler ash emissions that emanated from Bruce's compost operations were documented on nearby private property sufficient to cause eye irritation, thus interfering with the normal usage and enjoyment of the property, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 7, 2007.

## **III. DENIALS**

Bruce's generally denies each allegation in Section II ("Allegations").

## **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Bruce's pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Bruce's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Bruce's, Inc., Docket No. 2007-1217-AIR-E" to:



Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Bruce's. Bruce's is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Bruce's in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Bruce's, or three days after the date on which the Commission mails notice of the Order to Bruce's, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director


\_\_\_\_\_  
Date 12/03/2007

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.


I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 8-23-2007

  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Bruce's, Inc.

\_\_\_\_\_  
Title Vice President

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

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